Mr. FRIST. I do. And then we are going to subtract the time from the questions.

Mr. REID. Yes, I understand.

Mr. FRIST. That is fine, my 22 minutes apply, or whatever the time was I was actually speaking, to our first-hour agreement.

I still have some unanimous consent requests.

Mr. REID. I certainly understand.

Mr. FRIST. But for the length of my speech, it would be fine to apply that time to the first hour since we will be splitting the hours.

The PRESIDENT pro tempore. Is there objection to the request?

Mr. BYRD. Mr. President, further reserving the right to object.

The PRESIDENT pro tempore. The Senator is recognized for a question.

Mr. BYRD. And I do not intend to object, Mr. President.

May I say to the distinguished majority leader, 4 million veterans receive health care through the veterans health care system funded by the VA-HUD bill. How should we explain to these veterans that the bill is being set aside?

Mr. FRIST. Mr. President, through the Chair, I have had the wonderful opportunity of working in veterans hospitals myself for the last—until I got to this body—for 15 years, every day operating, giving care to veterans in medicine. So I appreciate veterans hospitals. I worked in veterans hospitals. I have probably spent more time than anybody in this Chamber in veterans hospitals—from early in the morning through many nights, just as we are going tonight. I care about hospitals. We are going to address them.

What I would ask, in response, is if the Senator from West Virginia would agree to a 2-hour unanimous consent to finish this bill, VA–HUD, on Friday—on Friday—so we can answer your question. If we can do that, we will be able to do exactly what you want to accomplish, to finish that bill, and it allows me to keep a commitment to a packed Chamber right now where we can debate the issues that people are here to debate. And then, within 48 hours, we have accomplished my objective and your objective. Two hours, we will do it Friday, as soon as we finish the cloture votes?

Mr. BYRD. Will the Senator yield for me to respond?

Mr. FRIST. Yes, sir.

Mr. BYRD. Mr. President, I have long admired the distinguished Senator from Tennessee.

[Disturbance in the Galleries.]

Mr. FRIST. Thank you, sir.

Mr. BYRD. I do not say that facetiously.

The PRESIDENT pro tempore. The Gallery will be warned, no response from the Gallery is permitted in the Senate.

Mr. BYRD. Some people are serious when they say things. But I have admired the Senator as a great physician. He speaks of his long service to veterans. I speak of a long service to veterans—more than 51 years in this Congress. I was here when the Veterans Administration was created. About Friday—Friday——

Mr. FRIST. Yes, sir.

Mr. BYRD. I am the recipient of the Franklin Delano and Eleanor Roosevelt Award for Freedom from Fear. I will receive that award on Saturday. I am not in a position to drive up on Saturday morning and receive that award. My wife is invited also with me. She cannot go. So I have to go on Friday, and the train leaves at 1 o'clock. As far as I am personally concerned, I would be happy to come in and finish those 2 hours and get the—I believe there are four votes that are going to be scheduled on clotures that morning.

Well, I have cast more rollcall votes than any living Senator, any deceased Senator, any Senator in the history of this Republic, any other Senator. I have 16,627 or 8 or 9—somewhere along there.

I say all that to say this: I do not want to miss any rollcall votes on Saturday. I take great pride in my rollcall record extending over 45 years in the Senate. It is 98.7 percent. So I missed less than 2 percent of the votes.

Could we agree then—I do not want to put myself in the position of my own leaders, as I did not want to put myself in the position of the distinguished majority leader on the other side. I would like to be able to make the four votes on Friday, catch my train at 1 o'clock, and go up and receive this very prestigious award.

Could we work something out to that effect?

Mr. FRIST. Mr. President, what I would like to do, because it is going to affect everybody's schedule, is to address this. If we can go through the remainder of the unanimous consent request, then try to address it.

I just want to restate I would love to finish this bill, the appropriations bill on VA–HUD, and I would love to be able to work it out if we can on Friday.

The PRESIDENT pro tempore. Is there objection to the request?

The regular order is to report the nomination at this time. The clerk——

Mr. BYRD. No. I reserved the right to object. May I have another minute? I am not participating in this whatever you call it—marathon, talkathon, blame-athon, or whatever it is. That is not of my interest right now. I am interested in the appropriations bill. It can be passed in 2 hours or less. As far as I am concerned, we could pass it now, just have a rollcall vote on it, the VA–HUD, but that would depend upon the two managers.

I am not going to impose on the time of the Senate and the majority leader, but I ask the majority leader, would he please put the request in some form to finish this bill within the next hour, have a vote up or down within the next hour?

Mr. FRIST. Responding, once again through the Chair, I will not be making that request tonight. Tonight we are going to stay on the judicial nominees. But I would like to discuss with you and the managers of the bill, and the Presiding Officer, the chairman of the Appropriations Committee, how we can best resolve that as quickly as we possibly can.

Mr. BYRD. Thank you, Mr. President. I remove my reservation and thank the majority leader.

The PRESIDENT pro tempore. Did the majority leader submit a unanimous consent request?

Mr. REID. Yes, he did. He did.

The PRESIDENT pro tempore. Without objection, it is so ordered. The request is granted.

EXECUTIVE SESSION

NOMINATION OF PRISCILLA RICHMAN OWEN, OF TEXAS, TO BE UNITED STATES CIRCUIT JUDGE FOR THE FIFTH CIRCUIT

The PRESIDENT pro tempore. The clerk will report.

The assistant legislative clerk read the nomination of Priscilla Richman Owen, of Texas, to be a United States Circuit Judge for the Fifth Circuit.

The PRESIDENT pro tempore. The majority leader.

Mr. FRIST. Mr. President, I would inquire of the Democratic side if they would be prepared to grant a time limitation on this nomination of 2 hours?

The PRESIDENT pro tempore. The Senator from Nevada.

Mr. REID. Thank you very much, Mr. President.

Through you to the distinguished majority leader, first of all, let me really say we could finish this bill quickly tonight. The decision has been made not to do that. We will be happy to come back Friday and cooperate with the majority. We could not agree to a time, but I think as to how we worked before, if we go to that bill Friday, within a very reasonable period of time we could finish it on Friday. But as far as a specific time agreement is concerned, it would be very difficult to do that. But I stand ready and willing to come back to this bill on Friday and finish it on Friday; that is, VA–HUD. It is too bad we could not do it tonight.

In direct response to the majority leader, we would not be in a position to grant a time on Priscilla Owen. We have already voted on this matter on at least two or three separate occasions, as I recall. So in response to the distinguished majority leader's request, we would not agree to a time agreement on Priscilla Owen of any duration.

CLOTURE MOTION

Mr. FRIST. Given the objection, I send a cloture motion to the desk.

The PRESIDENT pro tempore. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on Executive Calendar No. 86, the nomination of Priscilla Richman Owen, of Texas, to be United States Circuit Judge for the Fifth Circuit:

Bill Frist, Orrin Hatch, Lindsey Graham, Mike Crapo, Jeff Sessions, Conrad Burns, Larry E. Craig, Saxby Chambliss, Mitch McConnell, Jim Bunning, Judd Gregg, John Cornyn, Jon Kyl, Trent Lott, Mike DeWine, Craig Thomas, Kay Bailey Hutchison.

NOMINATION OF CAROLYN B. KUHL TO BE UNITED STATES CIRCUIT JUDGE FOR THE NINTH CIRCUIT

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of Calendar No. 169, the nomination of Carolyn B. Kuhl, to be a United States Circuit Judge for the Ninth Circuit.

The PRESIDENT pro tempore. The nomination will be stated.

The assistant legislative clerk read the nomination of Carolyn B. Kuhl, of California, to be United States Circuit Judge for the Ninth Circuit.

Mr. FRIST. Mr. President, again I ask the other side if they would be prepared to set a time certain for an up-or-down vote on this nominee after whatever debate they may need.

The PRESIDENT pro tempore. The Senator from Nevada.

Mr. REID. Mr. President, in an effort to understand what is going on here, everyone should understand, these requests require a simple majority vote, and it would be senseless to take a vote on this. That is why we did not object.

I would say with this nominee, Carolyn Kuhl, we have reviewed this in very deep detail and would not be in agreement at this time to set any time limit on the debate. I ask the distinguished majority leader to advise us when we finish this woman and the following nominee, if you would be good enough to tell us when you anticipate voting. We are waiving the request for the requirement of a quorum. So if the majority leader can give us some indication when he desires to vote on this, whether it is 12:01 on Friday morning or later in the day.

Mr. FRIST. Mr. President, in response, we plan on voting Friday morning at a reasonable hour to be defined. That means sometime after 8:30 Friday morning. I will be more specific.

Mr. REID. I appreciate that very much. I object.

The PRESIDENT pro tempore. Objection is heard.

CLOTURE MOTION

Mr. FRIST. I send a cloture motion to the desk.

The PRESIDENT pro tempore. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on Executive Calendar No. 169, the nomination of Carolyn B. Kuhl, of California, to be United States Circuit Judge for the Ninth Circuit.

Bill Frist, Orrin Hatch, Lindsey Graham, Mike Crapo, Jeff Sessions, Conrad Burns, Larry E. Craig, Saxby Chambliss, Mitch McConnell, Jim Bunning, Judd Gregg, John Cornyn, Jon Kyl, Trent Lott, Mike DeWine, Craig Thomas, Kay Bailey Hutchison.

NOMINATION OF JANICE R. BROWN, OF CALIFORNIA, TO BE UNITED STATES CIRCUIT JUDGE FOR THE DISTRICT OF COLUMBIA CIRCUIT

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of Calendar No. 455, the nomination of Janice R. Brown, of California, to be a United States Circuit Judge for the District of Columbia Circuit.

The PRESIDENT pro tempore. Without objection, it is so ordered. The clerk will report.

The assistant legislative clerk read the nomination of Janice R. Brown, of California, to be United States Circuit Judge for the District of Columbia Circuit.

Mr. FRIST. Mr. President, once again, I ask if we would be able to limit the time for debate on this nominee to 8 hours or 10 hours.

Mr. REID. We object, Mr. President.

The PRESIDENT pro tempore. Objection is heard.

CLOTURE MOTION

Mr. FRIST. With that answer, Mr. President, I send a cloture motion to the desk.

The PRESIDENT pro tempore. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on Executive Calendar No. 455, the nomination of Janice R. Brown, of California, to be United States Circuit Judge for the District of Columbia Circuit.

Bill Frist, Orrin Hatch, Lindsey Graham, Mike Crapo, Jeff Sessions, Conrad Burns, Larry E. Craig, Saxby Chambliss, Mitch McConnell, Jim Bunning, Judd Gregg, John Cornyn, Jon Kyl, Trent Lott, Mike DeWine, Craig Thomas, Kay Bailey Hutchison.

Mr. FRIST. Mr. President, I now ask unanimous consent that the three live quorums required under rule XXII be waived en bloc.

The PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. FRIST. Mr. President, parliamentary inquiry: In terms of the time we used on our side, how much time, in terms of my initial speech, was used by this side?

The PRESIDENT pro tempore. The majority has 4 minutes 47 seconds. The minority has 11 minutes 22 seconds.

Mr. REID. If I can make an inquiry through the Chair, Mr. President, the unanimous consent request, as I have heard the ruling of the Chair, is not counted against anybody; is that the way it is?

The PRESIDENT pro tempore. The time to object or reserving the right to object has been charged to the side making such a reservation.

Mr. FRIST. Mr. President, I suggest the general agreement is to spend an hour, 30 minutes to a side, and if they are not using the time, it will be yielded back to the other side. I ask unanimous consent that I use 15 minutes, 15 minutes for Senator HATCH, and we go to the other side.

Mr. REID. And we would have an hour?

Mr. FRIST. You would have 30 minutes.

Mr. REID. I say to the distinguished majority leader, we have had no time agreement the first hour other than listening to me object.

The PRESIDENT pro tempore. Reserving the right to object and statements made under such objection or reservation has been charged against the side making that reservation.

Mr. REID. I understand. So the Chair has ruled that the statement by Senator BYRD ran against us; is that true?

The PRESIDENT pro tempore. That is correct.

Mr. REID. So the next half hour will be used by Senators FRIST and HATCH, and then we will use our half hour.

Mr. FRIST. Again, I think it is time for us to move forward. Conceptually, we are going to have an hour, 30 minutes either side. Say I used 15 minutes—it may be more—Senator HATCH will speak about 15 minutes, and 30 minutes will be to your side, and we will be going back and forth.

Mr. REID. Fine. My only concern is we have had Senators we have scheduled to speak to use our half hour. Some of them have been champing at the bit here. If they don't speak now, they lose their time, their day in the sun.

Mr. FRIST. I thought I had a pretty good 20-minute speech. I was ready to start, but because of questions directed to me, again, about scheduling—we get things well set and then because of questions—if we can just start now and do as I requested, have 15 minutes and you take 30 minutes, we will be able to get started.

Mr. REID. I am wondering, I ask if we could use the next 15 minutes so my people who have been here, Senators waiting could take the time. I would divide whatever by 3 until the time until 7 o'clock.

Mr. FRIST. Would you please repeat that?

Mr. REID. Then we can start fresh at 7 o'clock with you and Senator HATCH giving us your statements, and we will take the next half hour.

Mr. FRIST. Mr. President, you mean I have Senator HATCH speak?

Mr. REID. We would take approximately 4 minutes each until 7.

Mr. FRIST. No, Mr. President, Senator HATCH is going to follow me, and then we will go into going back and

forth. Senator HATCH has also been waiting 30 minutes. If it hadn't been for these questions, we would have been done 15 or 20 minutes ago.

Mr. REID. I say through the Chair, I am trying to be peaceful and calm here. The Chair ruled we have 4 minutes left.

Mr. FRIST. Would the Chair clarify how much time we have available on either side?

The PRESIDENT pro tempore. The majority has 4 minutes 37 seconds. The minority has 10 minutes 47 seconds.

Mr. HATCH. I ask unanimous consent that immediately after the half hour taken by the Democrats, I be given an additional 11 minutes. I will take 4 right now.

Mr. SCHUMER. I could not hear the Senator from Utah.

Mr. REID. The Senator from Utah said we would go until 7 o'clock and then they would do the next half hour; is that right? Is that what you said?

The PRESIDENT pro tempore. Is there objection?

Mr. HATCH. No, I said I would take the 4 minutes now and then take the 11 minutes after you had half an hour. How is that?

Mr. REID. Out of their time, that is absolutely fine.

The PRESIDENT pro tempore. The Senator is recognized for 4 minutes.

Mr. HATCH. Mr. President, I think it is appropriate to have the chairman of the Judiciary Committee who has had to go through all this rigmarole to say a few words before we get into this debate. I know the distinguished majority leader wanted me to do so.

To be honest with you, Mr. President, just think about it. All we want to do is what the Senate has always done. Once a nominee comes to the calendar, that nominee deserves a vote up or down under the advise and consent clause which is clearly a majority vote.

Never in the history of this Congress have we had what has been happening over the last number of years caused by the Democrats on the other side.

We should be voting on judges tonight, not debating judges. Frankly, there is a vocal minority of Senators preventing us from doing our constitutional duty to vote on judicial nominees. The American people need to know this, and although some of these folks have been moaning and groaning on the other side that we are taking this time, I suggest to them that there is hardly anything more important in a President's life, whoever that President may be, than getting his or her judicial nominations through.

Frankly, it is extremely important because this involves one-third of the coequal branches of Government. We found a continual filibuster on a number of these nominees.

Let me say this. Democrats seem to be very fond of saying: We passed 168 and we only filibustered 4. The fact is, that raw number of 168 we have had to fight pretty hard to get as well. But we have. Never in the history of this country have we had four stopped. That is only part of it.

I can name at least 15 that I have had various Democrats tell me they are going to filibuster. Most of them are circuit court of appeals nominees for the very important circuit courts in this country, people who have the ABA imprimatur, people such as Miguel Estrada; Priscilla Owen, who broke through the glass ceiling for women; Bill Pryor—even though he is conservative, he has always upheld the law even when he disagreed with the law; Charles Pickering, unanimously confirmed to the district court in 1990 and treated like dirt in the Senate—a racial reconciling. Yet he has been treated just like dirt. Carolyn Kuhl—we are going to have her first cloture vote on Friday because they are going to filibuster. Janice Brown—they are filibustering her; Claude Allen, I am told they are going to filibuster Claude Allen. How about Terrence Boyle of the Fourth Circuit? It looks as if they are going to filibuster him. James Deavers is being held up. Bob Conrad is being held up.

Four Circuit Court of Appeals judges for the Sixth Circuit out of Michigan are being held up by our colleagues on the other side; two district court nominees, and I could name some others.

The fact is, for the first time in history, they are treating a President of the United States in a ridiculous, unconstitutional fashion and not allowing him to have an up-or-down vote on his nominees. If they can defeat these nominees, that is their right, but they should not be dragging their feet and making it very difficult for these nominees to come up.

I heard some of the comments about how important the appropriations process is. It is important, but I can tell you we have had foot dragging almost all year by our colleagues on the other side, and it is important, but there is nothing more important than making sure that our courts are well staffed with competent judges who are going to enforce the law for the benefit of the American citizens.

There is nothing more important than that. Frankly, it is the one legacy that any President can leave. When Bill Clinton was President, we helped him put through 377 judges, the second all-time record. I might add Ronald Reagan was the all-time record holder at 382, 5 more than President Clinton. President Reagan had 6 years of a Republican Senate to help him and President Clinton had only 2 years of a Democratic Senate, and he was treated abundantly fair.

There were 47 holdovers at the end. Contrast that to when Democrats controlled the committee and Bush 1 was President. There were 54 holdovers.

Mr. President, this is really wrong what they are doing. It has the potential of exploding this body. Frankly, we can't allow it to continue. It is time for the American people to understand this. I understand my time is up.

Mr. REID. Mr. President, I yield 2½ minutes to the Senator from New York, Mr. SCHUMER; 2½ minutes to the Senator from California, Mrs. FEINSTEIN; and 2½ minutes to the Senator from Wisconsin, Mr. FEINGOLD; in that order.

The PRESIDENT pro tempore. The Senator from New York.

Mr. SCHUMER. Mr. President, they say one picture says a thousand words; one sign will equal 30 hours of palaver. The bottom line is very simple, we have supported and confirmed 168 judges whom President Bush has sent us. We have blocked 4.

All the rhetoric, all the splitting of hairs, all the talking about angels on the head of a pin don't equal that. This debate will boomerang on my colleagues from the other side of the aisle because all the American people have to do is look at that sign and they say: Gee, you're right.

The bottom line is the President, the majority leader, and the chairman of the Judiciary Committee will not be content unless every single judge the President nominates is rubberstamped by this body. That is what they want. We all know it. We have been very careful and very judicious in whom we have opposed.

People who are getting life appointments should not be extremists, should not be out of the mainstream, should not be asked to roll back 30 or 60 years of jurisprudence, and the four we have blocked fall in that category.

The bottom line is very simple: If you want agreement, then read the Constitution and tell the President, in all due respect, to read the Constitution. It says advise and consent. Advise means consult. We get no consultation. Consent means the Senate does its own independent review. That is what we have done.

So I understand why early on this sign vexed my colleagues from the other side. The bottom line is simple: We have been reasonable; we have been careful; we have been moderate; we have been judicious. The other side and the President simply say my way or the highway. That will not stand.

The PRESIDENT pro tempore. The Senator's time has expired. The Senator from California is recognized 2½ minutes.

Mrs. FEINSTEIN. I thank the Chair.

Mr. President, I have served as a member of the Judiciary Committee since I came to the Senate. I take the job very seriously. I try to do my homework in looking at these judges. I very deeply believe that this election provided no mandate to skew the courts to the right. I deeply believe that judges should be in the mainstream of American legal thinking, that they should have the temperament and the wisdom and the intellect to represent us well on the highest courts of our land.

What I wanted to use my time for—and the 2½ minutes will not be enough to do it—is to indicate that during the

time I have been on the Judiciary Committee how I have seen the rules and the procedures of the committee change. Those changes have not been good. They have served to divide the committee more. They begin with changing the American Bar Association's 50-year tradition of rating the qualifications of potential nominees before the President nominates them, to after the President nominates them. I would like to say why I think that is important.

There have been changes made in the so-called blue slip policy so that concerns Senators from a nominee's home State are no longer given any consideration whatsoever. There has been a reinterpretation of a longstanding committee rule, rule 4, prohibiting the majority from prematurely cutting off debate over a nominee in committee. There has been the elimination of the tradition of holding a hearing on only one controversial nominee for appellate vacancies at one time. There have been changes to committee practice——

The PRESIDENT pro tempore. The Senator's time has expired.

Mrs. FEINSTEIN. I hope in the next hour perhaps I might have more time. I yield the floor.

The PRESIDENT pro tempore. The Senator from Wisconsin.

Mr. FEINGOLD. Mr. President, I think we ought to be spending 30 hours on the manufacturing crisis in our country. Since January 31, we have lost 2.5 million manufacturing jobs and over 70,000 of them are from Wisconsin alone.

These jobs are more than numbers on a page. They are all too real. The thousands of Wisconsin residents who have petitioned their Government know this firsthand.

In their letters to me—and, Mr. President, I have with me over 2,000 letters that were sent recently to my home by manufacturers, not labor union members but manufacturers from the State of Wisconsin that are desperate about this problem. Thousands of people from all around Wisconsin, from places such as Sparta and Trempeleau and West Bend and Muskego, write that the first and foremost reason behind these lost jobs is our trade policy.

These letters say: Our elected officials say workers will benefit from this free trade policy and the free trade agreements that come with it, but the opposite has occurred. Our trade deficit is increasing at a pace of $1.5 billion per day. That is how many more products we are importing than we are making. As you can see, these trade agreements are not working to the benefit of U.S. workers.

These letters go on to talk about how manufacturing in America is dying a slow death. That is a much higher priority than spending 30 hours talking about four judicial nominations, and we should respond to the desperate situation that the American people are facing with manufacturing job loss.

I yield the floor.

The PRESIDENT pro tempore. Under the previous order, the next hour is equally divided between the two parties, 30 minutes to each side. Who yields time? The Senator from Utah.

Mr. HATCH. As I understand it, I have 11 minutes left; is that correct?

The PRESIDENT pro tempore. The Senator has a half hour.

Mr. HATCH. Mr. President, we should be voting on judges tonight. Instead we are debating judges tonight because a vocal minority of Senators is preventing us from doing our constitutional duty to vote on judicial nominees.

The American people need to know that. That is why we are here. If you stop and think about this sudden new set of arguments or at least arguments they have used for a long time, the Democratic leadership has been blocking all kinds of passage of bills that are America's priorities for the whole year.

Now they are complaining because we want to let the American people know how bad they have been about Federal judges, which, after all, is one of the most important things we do around here. Just think about it. The long overdue fiscal year 2003 appropriations bills were finally enacted on February 20, 2003. For the first time in history, there were filibusters to defeat the President's circuit court nominees, now up to six who are actually filibustered, and at least another nine whom, I have been told, they will filibuster. The sign they have is an absolute outright falsehood.

We needed legal reforms to stop lawsuit abuse against doctors, businesses, and industries that have been virtually banned by the tactics of the minority. Medical liability, class action reform, gun liability, and asbestos reform: they have all been subject to delays or filibuster by the minority.

Similar delays led to a record number of days spent on the budget resolution and the near record number of rollcall votes on amendments, many of which were virtually identical. The distinguished Senator from Alaska understands that as chairman of the Appropriations Committee.

The most innovative waste of time came on the Energy bill. After spending 22 days on the Energy bill last year, we spent 18 days on the Energy bill this year, only to pass the same version of the Energy bill that passed the Senate last year.

Bioshield legislation necessary to ensure proper vaccines in medicine to counter bioterrorism attacks has still not cleared.

The State Department reauthorization has been stalled by Democrats insisting upon unrelated poison pill amendments be voted on prior to passage. I could go on and on.

The fact is, there has been a steady slowdown, steady slow walk around here, ever since we became the majority.

Now, the issues we are highlighting tonight could not be more fundamental to our country, to democracy, to the rule of law: separation of powers. All are at stake in this ongoing debate. Among the constitutional Framers' conceptual breakthroughs was that the judicial branch would receive equal status to that of the executive and legislative branches. An independent judiciary is the thread that binds the country together and ensures law and order. It is important. It is indispensable to the survival of a civilized society.

If it had not been for the restraining force of an independent judicial branch, either the executive or the legislative branches would have usurped incredible power and destroyed the checks and balances that are at the very foundation of our constitutional form of government. So we all have a stake in this debate tonight, and it is my hope that our opponents across the aisle will act to restore the constitutionally required up-or-down vote for judicial nominees. Ultimately, through the ballot box, the people in my home State of Utah and across America will decide who nominates and who confirms judges.

Let me repeat that our Nation's founding document requires that every judicial nominee who reaches the Senate floor receive an up-or-down vote. It is a simple, clear, and fair fact that lies at the heart of this debate. Once they hit the floor, they have always gotten a vote.

Every one of President Clinton's judges who hit the floor got a vote up or down, and only 1 out of 377 was defeated. But a minority of the Senate is rigging the system by engaging in an unfair set of unprecedented filibusters which are the culmination of an outright assault on the independence of the Federal judiciary.

When our colleagues across the aisle controlled the Senate, we saw nominees with the full support of their home State Senators denied hearings and votes for months and months. We saw nominees stalled by demands for unpublished opinions and volumes of written questions. We saw this become more and more serious since the beginning of this year.

We have continued to see ideology used to threaten the independence of our Federal judiciary by essentially requiring nominees to announce their views on issues that may come before them as Federal judges, something that has not happened in the past. But that is what they are requiring of President Bush's nominees, at least some of them.

They treated Miguel Estrada like dirt, while they allowed John Roberts to go through. Roberts was also in the Solicitor General's office. They did not ask for the highly privileged confidential matters for Roberts, but they did for Miguel Estrada.

By the way, most all of these people have high ratings from their gold standard, the American Bar Association.

We have seen for the first time in American history true filibusters of judicial nominees which are preventing the Senate from exercising its constitutional right and duty of advice and consent. This is harmful to the Nation, it is harmful to the judiciary, and it is certainly harmful to our institution. It is harmful to the President. It is harmful to these people who are willing to put their names up and to do this.

Article II of the Constitution of the United States invests in the President alone the power to nominate judges. There is no room for interpretation. The words are explicit. Yet we have seen efforts to usurp the President's constitutional authority not by constitutional amendment but through various proposals on how nominations should be made and demands on who should be nominated that exceed any reasonable interpretation of consultation.

We have also seen the filibusters of judicial nominees that brought us here tonight and prevent us from exercising our constitutional obligation of an up-or-down vote.

This assault on the judiciary is not without victims. There is no question that it is harmful to the Federal judiciary. More than half of its existing vacancies are considered judicial emergencies. So it is harmful to the President. He is not being treated fairly compared to all Presidents before him. And it is harmful to the Senate, whose constitutional roles are turned on their heads. It is perhaps most harmful to the individual lives of the nominees who have been denied a simple up-or-down vote, which they have always gotten before when they have been brought to the floor on the Executive Calendar.

Now let me talk about some of these nominees because I think it is important to remember that they are very real people who want to get on with their very real lives instead of hanging in the limbo of what has become the Senate's confirmation stall.

Let me turn to this particular picture. Former DC Circuit nominee Miguel Estrada, who is an American success story, unanimously gets the highest rating from the American Bar Association, the Democrats' gold standard. He was stopped for over 2 years—actually 3 years. Priscilla Owen broke through the glass ceiling for women and made it so women could become partners in major law firms, one of the most brilliant people in our society. She was an excellent witness, but they just do not want her.

William Pryor, of course, in my opinion, the outside groups tried to smear Pryor, and they did so with regard to his strongly held personal beliefs on abortion.

I might add that Charles Pickering, who I mentioned before, was passed by this body unanimously in 1990. Yet all of a sudden in the next 13 years he is unworthy to be on the circuit court of appeals?

No. It all comes down to abortion. We can go further. We can go further than just these nominees. I have mentioned a whole raft of others. I could name at least 15 colleagues on the other side who have indicated they are going to filibuster. Now that is abominable. All four of those nominees have been waiting years, and in some cases many years, for confirmation. All of them have been denied up-or-down votes.

On Friday, the Senate will consider the nomination of two more outstanding jurists, and let me just put up this second chart. Carolyn Kuhl served in the Reagan administration. She was only 28 years old at the time and they have tried to act like she had all kinds of authority to do things with which they disagree. She has virtually unanimous support from her fellow judges in California, many of whom are Democrats, who say she will make a terrific addition to the Ninth Circuit Court of Appeals.

Take Janice Rogers Brown, this African American woman who was the daughter of sharecroppers. She put herself through college and law school as a single mother—just think about that—and yet she is being treated in a very improper fashion.

I might add that nearly 100 of her fellow judges on the Los Angeles County Superior Court are in support of Carolyn Kuhl. She is a terrific nominee, but they suspect that she is probably pro-life. I do not know what she is. I do not know what Janice Rogers Brown is. They may be right on that, but so what?

I think if a person is otherwise qualified, no single issue should stop them from being able to serve their country on the Federal bench, and if we had taken the attitude they are taking, my gosh, President Clinton would have got very few judges. Instead he got 377, the second all-time record for confirmations.

DC Circuit Court nominee Janice Brown has spent nearly a quarter century in public service, including nearly a decade as a judge in the California State courts. This daughter of a sharecropper became the first African American woman to sit on the California Supreme Court in 1996. Why are they against her? Because they know she is conservative, and they want just one way of thinking among African Americans. She does not qualify because she happens to be conservative. No matter that she won 76 percent of the vote in the last election, more than any other nominee for the California Supreme Court, and wrote most of the majority opinions in the last year.

On Friday, we will have the opportunity to give these two nominees the up-or-down vote they deserve, but it is apparent the minority whip has said they are going to filibuster them.

I am proud to say in my 27 years in the Senate, some of my Democratic colleagues expressed similar views when a different President was in the White House. For example, the distinguished minority leader stated:

> As Chief Justice Rehnquist has recognized: The Senate is surely under no obligation to confirm any particular nominee, but after the necessary time for inquiry it should vote him up or vote him down. An up-or-down vote, that is all we ask.

That was their philosophy when they had the Presidency and they had the Senate Judiciary Committee and were the leaders in the Senate.

On this point, I agree with Senator DASCHLE. All we ask for is an up-or-down vote. If they want to vote against these people, that is their right, but they need to have an up-or-down vote. Why are they afraid of allowing simple up-or-down votes in the cases of these excellent nominees? Well, because we think—I think—there is more than adequate evidence that on a bipartisan set of votes these nominees would be confirmed by the Senate. If not, let the chips fall where they may. But these nominees deserve a vote. Vote them up or vote them down, but just vote.

I yield the floor.

The PRESIDENT pro tempore. The Senator from Kentucky.

Mr. MCCONNELL. Mr. President, my Democratic colleagues try to justify their unprecedented filibusters of President Bush's nominees by arguing that they want mainstream judges and that President Bush's nominees do not fit that criteria. Mainstream judges—I am a little puzzled by that assertion. I would think, for example, that Priscilla Owen is in the mainstream. She was rated unanimously well qualified by the ABA. She was endorsed by the past 16 Texas Bar Association presidents, both Democrats and Republicans. She has been twice elected to statewide judicial office in Texas, one of the States where they elect judges, and the last time, interestingly enough, she got 84 percent of the vote—unanimously well qualified by the ABA; supported by 16 presidents of the State bar of Texas, Democrats and Republicans, and gets 84 percent of the vote. Sounds like mainstream to me. Yet Democrats filibustered her nomination because of her interpretation of a Texas law saying minor girls could not have an abortion without their parents being notified—not consent but merely notified.

After all, school nurses need a parent's consent to dispense an aspirin to a child. Should not a parent be entitled to a simple notification when their child seeks an abortion? Over 80 percent of Americans think they should. That is a very mainstream notion.

So I was astonished that Democrats would say she was not ''in the mainstream,'' and, frankly, I think the American public would be astonished by such a conclusion that a person so ruling would not be in the mainstream. But ''mainstream,'' of course, is a relative term.

To help the American people understand the Democrats' view, we should look at some of the Clinton judges my Democratic colleagues have supported. Upon doing so, it should be pretty clear

that the Democrats' view of mainstream is colored by the fact that they are sitting on the far left bank.

Clinton class of 1994, Judge Shira Scheindlin, a get-out-of-jail-free card for terrorist sympathizers. In the days after 9/11, Federal agents did their job by detaining a material witness to the 9/11 attacks, a Jordanian named Osama Awadallah. Osama knew two of the 9/11 hijackers and met with one at least 40 times. His name was found in the car parked at the Dulles Airport by one of the hijackers of American Airlines Flight 77, and photos of his better known name's sake, Osama bin Laden, were found in Osama Awadallah's apartment.

Under the law, a material witness may be detained if he or she has relevant information and is a flight risk. The Justice Department thought Osama met both of those tests. While detained, he was indicted for perjury. But Judge Shira Scheindlin, a 1994 Clinton nominee, dismissed the perjury charges and released this man on the street. Her reason? She ruled that the convening of a Federal grand jury investigating a crime was not a criminal proceeding, and therefore it was unconstitutional to detain this Mr. Awadallah.

This was quite a surprise to Federal prosecutors who, for decades, had used the material witness law in the context of grand jury proceedings for everyone from mobsters to mass murderer Timothy McVeigh. So much for following well-settled law.

If anyone wants to read a good article about this case, I recommend the Wall Street Journal editorial from last year entitled ''Osama's Favorite Judge.'' It notes that thanks to Judge Scheindlin, this fellow is out on bail. We wonder how he is spending his time.

Just last Friday, the Second Circuit reversed Judge Scheindlin. The appellate court seemed quite puzzled that she would release this man given his obvious connection to terrorists. The Second Circuit held that his detention as a material witness was a scrupulous and constitutional use of the Federal material witness statute.

It is too bad Judge Scheindlin did not act in a similarly scrupulous fashion. Nevertheless, to Democrats she is probably ''in the mainstream.''

Let us take a look at the Clinton class of 1995, Judge Jed Rakoff. One of Judge Scheindlin's colleagues, a 1995 Clinton nominee, has ruled that the Federal death penalty is unconstitutional in all instances.

Now, some of my colleagues may share this position, but their views differ from the majority of Americans. When Judge Rakoff acts on his personal views, it is a very clear failure to follow Supreme Court precedent. Indeed, Judge Rakoff's rulings so brazenly violated precedent that even the Washington Post, which is against the death penalty as a policy matter, came out against his decision as gross judicial activism.

In an editorial entitled ''Right Answer, Wrong Branch,'' the Post noted that the fifth amendment specifically contemplates capital punishment three separate times. The Post noted:

> [T]he Supreme Court has been clear that it regards the death penalty as constitutional. . . . The High Court has, in fact, rejected far stronger arguments against capital punishment. . . . Individual district judges may not like this jurisprudence, but it is not their place to find ways around it. The arguments Judge Rakoff makes should, rather, be embraced and acted upon in the legislative arena. The death penalty must be abolished, but not because judges beat a false confession out of the Fifth Amendment.

Another editorial, this one from the Wall Street Journal entitled ''Run for Office, Judge,'' said as follows:

> It hardly advances th[e] highly-charged debate [on capital punishment] to have a Federal judge allude to Members of Congress who support capital punishment as murderers. If Judge Rakoff wants to vote against the death penalty, he ought to resign from the bench and run for Congress or the state legislature, where the Founders thought such debates belonged.

Judge Rakoff's ruling would prevent the application of the death penalty against mass murderers like Timothy McVeigh or Osama bin Laden. I guess Judge Rakoff is the kind of mainstream judge the Democrats would like to see on the bench.

There have also been some interesting rulings from the Ninth Circuit, finding the right to long distance procreation for prisoners. My friends on the other side believe very strongly in a living and breathing constitution. They also believe that the rule of law should not be confined to the mere words of the document and the Framers' intent. To them, those are anachronistic concepts. I was truly surprised, however, to read what a panel of the Ninth Circuit had tried to breath into the Constitution.

Three-time felon William Geber is serving a life sentence for, among other things, making terroristic threats. Unhappy with how prison life was interfering with his social life, Mr. Gerber alleged he had a constitutional right to procreate via artificial insemination.

A California district court rejected Mr. Gerber's claim. A split-decision of the Ninth circuit, though, reversed. Infamous Carter-appointee Stephen Rhinehardt joined President Johnson's appointee, Myron Bright, to conclude that yes, the farmers had indeed intended for ''the right to procreate to survive incarceration.''

In his dissent, Judge Barry Silverman—a Clinton appointee who was recommended by Senator KYL—wrote that ''This is a seminal case in more ways in one'' because ''the majority simply does not accept the fact that there are certain downsides to being confined in prison.'' One of them is ''the interference with a normal family life.''

Judge Silverman noted that while the Constitution protects against forced sterilization, that hardly establishes ''a constitutional right to procreate from prison via FedEx.'' The Ninth Circuit, en banc, reversed this decision, but only barely. And it did so against the wishes of Clinton appointees Tashima, Hawkins, Paez and Berzon, who dissented from the en banc ruling.

If anyone wants to read more about this case, I'd recommend George Will's piece entitled, ''Inmates and Proud Parents.'' If there ever was a circuit in need of some moderation, balance, and ideological diversity, it is the Ninth Circuit. It is made up of 17 Democrat appointees, but only 10 Republican appointees.

It is the Nation's largest circuit, covering nine states and 51 million people. It is also reversed far and away more than any other circuit. Indeed, it is reversed so often—from 1996–2000, the Supreme court reversed it 77 out of 90 times—it is known as a ''rogue'' circuit. This has forced its representatives to introduce legislation to allow their States to secede from the Ninth Circuit.

But my Democrat colleagues probably won't give Ninth Circuit nominee Carolyn Kuhl the simple dignity of an up or down vote. Evidently she is not as ''mainstream'' as all these Democrat judges.

If these Democrat judges represent the ''mainstream,'' then quite frankly, I am glad the Democrats think that Priscilla Owen, Carolyn Kuhl, and Janis Rogers Brown aren't in it. Unlike these Democrat judges, I am confident these women will follow precedent and act with commonsense.

The Senate should, as it did with Judge Paez, Judge Berzon, and other controversial Democrat nominees, give these women the simple dignity of an up or down vote.

I yield the floor.

The PRESIDENT pro tempore. The Senator from Nevada.

Mr. REID. Thank you very much, Mr. President.

I talked quite a bit on Monday about this matter dealing with jobs. We should be talking about jobs. We should be talking about unemployment, not four people who have jobs.

What I am talking about, what we are talking about on this side is absolutely valid. One needs only to go to the Web site of the majority leader, Senator FRIST, prior to his pulling from his Web site the information to the following question: Should the President's nominees to the Federal bench be allowed an up-or-down vote on confirmation as specified in the Constitution? Sixty percent, no.

Even the majority leader's Web site indicates that what is going on here is absolutely wrong. The majority of the people who responded, almost 10,000 people, said this is the wrong approach. This is from the majority leader's own Web site.

I also say that this has been referred to as a carnival—I don't know if that is an exact term. But as an indication that it is circus-like, one need only get

an e-mail that was sent to various Senators on the majority side saying:

It is important to double your efforts to get your boss to S–230 on time. Fox News channel is really excited about the marathon. Britt Hume at 6 would love to open the door to all our 51 Senators walking on to the floor. The producer wants to know, will we walk in exactly at 6:02 when the show starts so we can get it live to open Britt Hume's show? Or, if not, can we give them an exact time for the walk-in start?

Mr. President, we have said this should be about jobs, about unemployment. Even Senator FRIST's people who respond to him on his Web site say yes. Is it a circus? Absolutely. You can see from this it is a circus.

Mr. DURBIN. Will the Senator yield?

Mr. REID. I am happy to yield.

Mr. DURBIN. Is it possible for us to get an update during the course of the evening on what Fox News is going to be looking for during this marathon? This opening about the march into the Chamber clearly was priority for the ''fair and balanced'' network. Will we get updates from time to time how Fox News would like to orchestrate the rest of this?

Mr. REID. I say to my friend, perhaps so. If not, maybe we could check with the Federalist Society, which, coincidentally, is starting their convention tomorrow.

The PRESIDENT pro tempore. The Senator is warned to speak through the Chair and not risk the probability of being interrupted and losing the floor.

Mr. REID. Mr. President, I don't understand. I was speaking through the Chair, answering the Senator's question.

The PRESIDENT pro tempore. The Senator from North Dakota must address the Chair and ask for permission.

Mr. DURBIN. There is no Senator from North Dakota.

Mr. REID. I respond through the Chair to the distinguished Senator from Illinois.

The PRESIDENT pro tempore. It protects the Senator's right to the floor.

Mr. REID. I say to my friend that the Federalist Society, as we know, is not mainstream dealing with judicial issues, but extreme, and indicate that may be the case. One of the lead speakers, of course, is Mr. Bork. To even compound the political nature of the operation, Attorney General William Pryor of Alabama is speaking there.

For everyone within the sound of my voice, it sounds to me rather unusual that someone who has the nomination and is trying to get confirmed to be a member of a very high Federal court—I cannot imagine it would be appropriate for that person to appear at an organization that is not in the mainstream, but extreme.

So what we have here, even by Senator FRIST's standards, looking at his Web site, we have the facts as I have indicated previously.

Mr. SESSIONS. Will the Senator yield?

Mr. REID. Not right now. I will not.

We have here from Senator FRIST's own Web site the fact that 60 percent of the people—about 10,000 responded before it was pulled from the Web site—say that the procedure being sought here is wrong.

I also say it is very clear this is a carnival-type atmosphere as indicated by the e-mail setting up the various presentations to satisfy Fox News.

Finally, the Federalist Society, coincidentally, is the typeset for this matter.

I yield 12 minutes to the Senator from California, Mrs. FEINSTEIN.

The PRESIDENT pro tempore. The Senator from California is recognized for 12 minutes.

Mrs. FEINSTEIN. Mr. President, what I was trying to do was essentially trace changes in committee procedure with the difficulties the Judiciary Committee seems to be countenancing in present days. A good deal of it has to do with blue slip policy because it was the second tradition to fall by the wayside when President Bush took office.

Under the Clinton administration, nominees were often blocked not only by home State Senators but by any single Republican Senator. At the very least throughout the years preceding the Bush administration, a home State Senator's objection to a nominee would effectively stop that nominee from moving forward.

Let me show a copy of a blue slip used during the Clinton administration, starting in January of 1999, and sent to each home State Senator. The document itself specifically states that no proceedings on this nominee will be scheduled until both blue slips have been returned by the nominee's home State Senators.

That policy was followed without fail and without question. Even before 1999, during the Clinton Presidency, the blue slip said ''unless a reply is received from you within a week from this date, it will be assumed that you have no objection to this nomination.''

But still, if there was an objection from a home State Senator, that nominee simply did not move, did not get a hearing, did not get a vote, did not get confirmed. It was, in fact, a filibuster of one.

Today, there is a new blue slip policy, one in which the objections of one or even both of the home State Senators is no longer dispositive. That is part of the problem. This keeps changing, dependent on who is President. This latest policy puts Democrats on the committee and in the Senate in a difficult position.

In the past, if a home State Senator objected to a nominee, that nominee did not proceed; there would be no committee vote and no filibuster on the floor. Fifty-five Clinton nominees did not receive a hearing. This well could have been a filibuster of one. The blue slip is secret; nobody knows.

Let me name some of the Clinton nominees who were filibustered by one or two members of the Judiciary Committee. Elena Kagen, nominated to the District of Columbia Circuit, nominated by Clinton, June 17, 1999. The nomination was returned December 15, 2000. She waited 547 days without getting a hearing or a vote in the Judiciary Committee. She is currently the dean of Harvard Law School.

Lynette Norton, nominated for the District Court for the Western District of Pennsylvania. Nominated by President Clinton on April 28, 1998, in the 105th Congress. Her nomination, which was submitted to the 105th and 106th Congresses, was returned both times without a hearing. She waited 961 days without a hearing or a vote in the Judiciary Committee. Again, a successful filibuster by one or two Senators, in secret.

Barry Goode, nominated for the Ninth Circuit. Goode was nominated by President Clinton on June 24, 1998. After 3 years of inaction, President Bush withdrew his nomination, on March 19, 2001. Mr. Goode waited 998 days without ever getting either a hearing or a vote in the Judiciary Committee. A filibuster of one or two, in secret—no hearing, no opportunity to read a transcript, no opportunity to go back and read writings, speeches, or look into a nominee's background. Just because of one or two Senators, a hearing is denied; the filibuster is complete.

H. Alston Johnson, nominated for the Fifth Circuit, a Louisiana slot. President Clinton nominated Johnson on April 22, 1999. His nomination was returned December 15, 2000. He waited almost 697 days without getting a hearing or a vote in the Judiciary Committee.

This goes on and on and on.

Now, the nominees before us today had hearings. There was debate. There was a markup. There was a debate. There was a vote. We did read their background. And based on knowledge, the minority of this body made a decision that we do not wish to proceed to affirm them. We have over 40 votes to do so. This is not the vote of one person in secret preventing a hearing from taking place. Now that is as much a filibuster as this is.

You are looking at me strangely, Mr. President?

The PRESIDING OFFICER (Mr. TALENT). There is no reason for that. I am just inquiring of the Parliamentarian about the time remaining.

Mrs. FEINSTEIN. And I don't want to use the time because I know Senator DURBIN—how much time do we have remaining?

The PRESIDING OFFICER. The minority has 18 minutes, of which 5½ minutes, approximately, still remain for the Senator from California.

Mrs. FEINSTEIN. Thank you.

So my point is that much of what has been happening in the Judiciary Committee has been to make it more confrontational. The blue slips are an excellent case in point. Changing when the American Bar Association ratings are known is a good point.

I remember during the Clinton administration when the ratings were

done earlier and I had to call a nominee and tell them that because they had been out of the practice of law for a period of time, they were deemed unqualified by the American Bar Association and the President was not going to move their nomination. So without embarrassment to the individual, that nomination was withdrawn.

Today, you do not get the American Bar Association's qualified or partially qualified or unqualified rating until after the nominee is on the Hill.

Now there are those who do not think the American Bar Association's evaluation is worth anything. There are those on the committee who believe it is. So there is a difference in point of view. But at least have the qualification or nonqualification done early enough so that it can save the individual humiliation and also play a major role.

Let me talk for a minute about rule IV because I think rule IV again divided our committee in a way that it did not have to be. Rule IV has been a Senate tradition. It is a rule. It is a hard and fast rule. It prevents closing off debate on a nominee unless at least one member of the minority agrees to do so. Twice this rule has been reinterpreted, really violated, and votes have been forced on nominees well before debate has ended. The committee's rule in question contains the following language:

The chairman shall entertain a nondebatable motion to bring a matter before the committee to a vote. If there is objection to bringing the matter to a vote without further debate, a rollcall of the committee shall be taken and debate shall be terminated if the motion to bring the matter to a vote without further debate passes with 10 votes in the affirmative, 1 of which must be cast by the minority.

That enables the minority to delay a matter. It is in the rules of the committee to give it more time. This rule is not being followed.

This is one of the only protections the minority party has in the Judiciary Committee. Without it, there might never be debate at all. A chairman could convene a markup, demand a vote, and the entire process would take 2 minutes. This is not how a deliberative body should function. More importantly, it is contrary to our rules. That is one of the reasons we are where we are today.

This rule was first instituted in 1979 when Senator KENNEDY was chairman of the Judiciary Committee. It has been followed to the letter until very recently.

This is a nation of laws. We expect these laws to be obeyed even if they are just Judiciary Committee rules.

Let me give another situation, and that is ignoring traditional State vacancies. There is also a willingness by this administration to simply change the playing field if they do not like a result. Fourth Circuit nominee Claude Allen is one such instance. He is from Virginia. He has been nominated for a position that has traditionally been filled from Maryland. Why? Because President Bush became frustrated that Maryland's two Democratic Senators would not sign off on the nominees he wanted for that position. So he decided to simply go where he could find more friendly company—Virginia's two Republican Senators.

This stark determination to simply fill the bench with conservative jurists at all costs is what gives the minority in the Senate pause when considering whether to simply approve every Bush judge who comes our way or make a stand on some. We have chosen to make a stand on some. There are other attempts to ignore the minority. There are little things as well, things that add up over time to give the clear impression that the majority does not care about the needs or the will of the minority. That simply serves to create, increasingly, a bunker mentality among Democrats in today's Senate.

For instance, earlier this session, the Judiciary Committee scheduled a hearing with three very controversial circuit court nominees on a single panel for an appellate court.

The PRESIDING OFFICER. The Chair needs to inform the Senator from California she has used her 12 minutes.

Mrs. FEINSTEIN. May I finish my statement?

Mr. REID. I yield the Senator 2 more minutes.

Mrs. FEINSTEIN. The point is, these were all controversial nominees. A controversial nominee's hearing can run 8 hours. If you schedule three, you truncate the hearing for each, and you do not allow the minority to do their due diligence in terms of their homework.

I thank the Chair and I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, I yield the remainder of our time to the distinguished Senator from Illinois, Mr. DURBIN.

The PRESIDING OFFICER. The Senator from Illinois is recognized, and he has 11 minutes 45 seconds.

Mr. DURBIN. Thank you, Mr. President, and I thank the minority whip.

First, for those who are following this debate, if it can be characterized as such, you should understand we had an opportunity to finish the appropriations bill for the Veterans' Administration, a $62 billion bill to fund veterans hospitals, clinics, and health care across the United States. We tried.

Senator BYRD of West Virginia came to the floor and said: Can we postpone what we are doing tonight here to finish this important appropriations bill so we can go to conference and get ready to adjourn this session in a timely fashion? Sadly, the Republican side objected to finishing the appropriations bill for the Veterans' Administration. It is their belief what we are doing now took precedence, is more important. It will be up to the voters and the public to make a judgment as to whether they were right.

I would also say that instead of addressing some issues families across America might tune in to follow, such as the unemployment in this country, and what we are doing about it, we are here debating a situation where 4 judges have been held out of 172 submitted by President Bush.

I would think, frankly, we ought to spend a little time really addressing the problem of unemployment in this country. This President has witnessed, in his administration, a loss of more than 3 million private-sector jobs. That is a record. Unless something changes dramatically, this President will be the first President since Herbert Hoover to have lost jobs during the course of his administration. Over 3 million Americans unemployed. Sadly, we have 9 million unemployed across the country today and their unemployment benefits are running out.

UNANIMOUS CONSENT REQUEST—S. 1853

In the interest of at least trying to do something constructive and legislative this evening, rather than just exchanging our comments back and forth, I am about to make a unanimous consent request that the Senate proceed to legislative session, and the Finance Committee be discharged from further consideration of S. 1853, a bill to extend unemployment insurance benefits for displaced workers, that the Senate proceed to its immediate consideration, and that this bill be read a third time and passed, and the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. Is there objection?

Mr. SESSIONS. I object.

The PRESIDING OFFICER. Objection is heard.

Mr. DURBIN. I am not surprised because what we are about tonight is not the issues families care about. We are about a political script. Senator REID of Nevada read to us this all-points bulletin that was sent out to the Senators saying: Be sure and get over here exactly at 6 o'clock. It said: The Fox News channel is really excited about this marathon. Britt Hume at 6 would love to open with all of our 51 Senators walking on to the floor. The producer wants to know, will we walk in exactly at 6:02 when the show starts so they can get it live to open Britt Hume's show, or, if not, can we give them an exact time for the walk-in?

That is what this is about: It is about theater. The theater we are witnessing tonight is one where, frankly, the curtain should come down. We ought to start talking about things people really care about across America. I can tell you, it is not about 4 judges out of 172. We have approved for this President 168 of his nominees. I think it is a new record. I do not think any President in that brief a period of time has had 168 nominees approved. Lest you believe the Democrats dragged their feet, we approved 100 of these judges during the 17 months PAT LEAHY was chairman of the Senate Judiciary Committee. The remaining 68 came through under Republican Chairman HATCH. I think there has been a concerted and conscientious effort to give the President

his nominees. Then, of course, there were 4 who were not approved—168 to 4. So 98 percent of this President's nominees have been approved. By any reasonable standard, this President is doing very well. Most people would agree, except for the 51 Senators on the other side of the aisle. They believe unless the President gets every nominee, this is a miscarriage of justice.

Sadly, though, they are ignoring the obvious. The obvious is the Constitution of the United States gives this Senate the authority to say yes or no, to advise and consent. Article II, section 2: Advice and consent of the Senate. Some of these Republican Senators would like to see this phrase go away and make their argument at least a little plausible, but it is a fact. We have the authority under the Constitution we swear to uphold to make these decisions; and we have made them.

Of course, not only is the Constitution on our side, but the rules of the Senate are on our side. It reminds me in law school, they told you early in a trial advocacy course—and this a cliche, I know—they used to say: If you have the law on your side in your trial, beat on the law. If you have the facts on your side, beat on the facts. But if you do not have the law or the facts on your side, beat on the table. That is what is happening in this 30-hour marathon. Our Republican colleagues are beating on the table. The law is not on their side.

The Constitution says we have the authority to say no. We have said no 4 times out of 172 opportunities. It is constitutional to do so. Are the facts on our side? Are we being unfair to stop 4 judges, approving 168 and stopping 4? I do not think so.

Frankly, if you look at the record of the Republicans in control of this same committee with a Democratic President, you will find some 63 nominees were never given the decency of a hearing. They never had a chance to even appear and introduce themselves to the committee. The decision was made by the Republican leadership, with a Democratic President, not to even let them in the building.

I have been through this. Three of my nominees that happened to. Do you know what it consisted of? If any one Republican Senator objected to any nominee, end of story. They effectively had a filibuster by one Senator. They stopped these nominees in their tracks.

I can recall going to Senator John Ashcroft, our Attorney General, with one extraordinarily talented nominee, and pleading with him, after the man had waited for a year for a hearing, pleading with him to at least meet the man. Let him come before the committee. No way. The answer was no. End of story. End of nomination.

That was the treatment accorded to three judges from my State during the short period of time when I was here and President Clinton was President, as the Republicans ruled the Senate Judiciary Committee.

I lost 3 nominees. Did I rally my Democratic colleagues: ''Let's all get together and hold our breath and turn blue for 30 hours because I have lost 3 nominees''? No. Maybe I could have. Maybe I should have. But I did not. I understood it. I thought it was fundamentally unfair, and I still do.

What we have done to these four nominees is not unfair. Each and every single one of them has had a hearing. Each and every one of them has been able to come to the committee and present their credentials. That never happened to 63 nominees offered by President Clinton.

This President has a pretty good batting average when it comes to the Senate: 98 percent of his nominees have gotten through. But for the 2 percent, we are meeting this evening.

I might add here, if you take a look at the issues at hand, the Senator from Nevada raised an interesting one. Almost without fail, the majority of the 168 nominees were all members of this Federalist Society. It sounds like a secret handshake society. It is something else. I am not sure exactly what it is. I will tell you why I am not sure.

I do know this. If you are an aspiring law student who one day wants to be a Republican nominee for a judgeship, my recommendation to you is to join the Federalist Society today and do not miss a meeting because, frankly, that is a requirement if you are going to make it into the ranks of judges in the future.

What is it about this society? I don't know. But if you scratch the DNA of all these Republican nominees, you are going to find that Federalist Society chromosome. It is in every one of them. Time and again, I have said to these nominees: What is the Federalist Society? What does it mean to you? Some people say it is a rather extreme organization that views the law and the Constitution in a manner that most Americans do not. But when I ask these nominees—I can remember a Professor Viet Dinh of Georgetown Law School where I went to school many years ago. I said: You belong to the Federalist Society. Why? He said: Because I get a free lunch in Chinatown once a month.

Well, I think it is more than that. If you go to their Web site and ask the Federalist Society what they believe, what they put on their Web site is they talk about how we have lost control of the law and the liberals are taking over—all the stuff you expect. Then when you ask each of these nominees: Well, do you agree with that? ''Oh, no,''—with one exception: Mr. Pryor. William Pryor of Alabama says, yes, he does agree with it. If you got to know Mr. Pryor, you would understand he is rather unabashed in his political beliefs.

The fact of the matter is, the nominees we are receiving from the White House are not mainstream nominees. Sadly, of the 168 we have approved, many could be challenged as outside the mainstream, and that is not what America is looking for.

President Clinton knew if he sent up a real liberal, someone who, frankly, had the credentials of the left, he did not stand a chance before Senator ORRIN HATCH's Judiciary Committee. We would strive to find people with extraordinary legal credentials, people who really have made a difference in terms of their practice of law and what they have done; and they, too, suffered before that same committee.

This President has no qualms. The people he sends to us, whether it is Miguel Estrada or whether it is William Pryor or Priscilla Owen, each and every one of them have come back—Charles Pickering—with credentials that just do not pass the middle-of-the-road test.

Why are we doing this for 30 hours? Let's lay it on the line. This memo from Fox News tells you why we are here. We are here to grind raw meat for the Republican rightwing, so television networks like the fair and balanced Fox News network can rail on for days and weeks about this 30-hour tribute to the Republican point of view, so the radio talk show hosts, who blather on every single day from the right, will have much more to talk about. And instead of dealing with real issues, paying for the Veterans' Administration, so we can get that done, and meet our obligations, taking care of the unemployed across America, so they can feed their families and avoid bankruptcy, we do not have time for that. Our time has to be focused and dedicated to this debate.

I will say to my colleagues in the Senate, I think my friends on the Republican side will have to agree with this: Though they do not like the outcome of the four judges we have talked about here, we have given the nominees, even when Senator LEAHY was chairman, ample opportunity to explain who they are and what they stand for. I think what we have asked for is reasonable.

What we ask of every judicial nominee, from a Democrat or Republican President, is really basic. They have to be people who are honest, of high integrity. They have to understand the law. They should be people who do not come to this job with an ax to grind. That is not too much to ask. Four have failed that test; 168 have been approved.

The PRESIDING OFFICER. The time of the minority has expired.

The Senator from Alabama.

Mr. SESSIONS. Mr. President, how much time is left in the first section for the majority?

The PRESIDING OFFICER. Five minutes 45 seconds.

Mr. SESSIONS. Mr. President, in response to a number of things that have been said, first of all, I want to correct Senator DURBIN. I think he misspoke when he said the Senate has said no to these nominees. What the Senate has said no to is an up-or-down vote. They have denied these nominees a vote. In

each case, these nominees have proven they have a majority of the Senators in this body ready and willing to confirm them, if they are given the up-and-down vote. The systematic use of the filibuster that is occurring now has never before occurred in the history of this Senate.

As to the Constitution, I will just point out article II, section 2, quoted by the Senator—this is what it says—the President ''shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two-thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors [and] judges. . . .''

Historically, this body has felt that constitutional language meant treaties required a supermajority, two-thirds vote, and judges would be confirmed by a majority vote, and that is what we have done.

I would just like to ask—I was going to ask Senator REID early, the distinguished assistant Democratic leader—name one position taken by the Federalist Society that is extreme. He will not be able to give you one of those, and neither would Senator DURBIN. This is a society of people who meet and discuss ideas. For example, they have had, in recent weeks, Senator SCHUMER's chief counsel speaking to the Federalist Society, as has Cass Sunstein, Marcia Greenberger, Laurence Tribe—three of the architects of the Democratic strategy for changing the ground rules of nominating judges.

This is really odd for me. I know Senator DURBIN said he has some legislation he would like to offer. Maybe he should have offered it Monday when the assistant majority leader was talking 10 hours down here about rabbits and cactus in Nevada and his book. That was all very interesting, but why weren't we doing any work then? I did not hear any complaints then when we were not passing legislation. That would have been an outstanding opportunity, I submit, to move forward.

Let me just say one thing about where we are on nominations. President Clinton had 377 judges confirmed. One judge was voted down on an up-or-down vote on this floor, a majority voted no—only one. When he left office, there were 41 judges pending and unconfirmed—only 41. President Clinton personally withdrew the nominations of 18. That is how they get 60.

When former President Bush left office, under Democrat control of the Senate, as Republicans were under Clinton, he had 54 nominees left unconfirmed. The record of the Republican Senate under President Clinton was superior under any standard of confirmations to that of the Democrats.

I believe we need to remember those numbers. We need to remember the Republicans rejected consistently the use of the filibuster. It was discussed by people. They said: Why don't we filibuster? Senator HATCH and others would say: We do not filibuster judges. This is why you do not filibuster judges. We never filibustered judges. In fact, one nominee I felt strongly about, whom I voted against, I voted for cloture to bring that nominee up for a vote to overcome a hold that was on the nominee.

My colleagues complain about the Federalist Society. They say they are extreme. They take no extreme positions whatsoever. They are a society that believes in the rule of law and they discuss those issues in free and open debate. But they have moved forward here such as Marsha Berzon and Ruth Bader Ginsburg on the Supreme Court.

ACLU members, American Civil Liberties Union members—do you want to know what their stated positions are on a lot of issues? They oppose steadfastly the death penalty. They openly support partial-birth abortion. They are consistently hostile to law enforcement. They oppose pornography laws, all pornography laws, in fact, even child pornography laws. They favor legalization of drugs.

We have confirmed a lot of ACLU members, as the Senator knows. They have stated positions that are contrary to the mainstream of American thought—no doubt whatsoever.

Somebody such as Attorney General Bill Pryor, who has a record of following the law to the letter, whether he agrees with it or not, is castigated because he makes a talk to the Federalist Society. It is suggested that is an extreme thing for him to do and it is not correct.

Mr. President, I yield back the time.

The PRESIDING OFFICER. The Senator from Alabama has 15 seconds.

Mr. SESSIONS. I yield the floor.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

Mr. SPECTER. Mr. President, parliamentary inquiry: Are we now starting 30 minutes of time on this side of the aisle?

The PRESIDING OFFICER. That is correct.

Mr. SPECTER. I thank the Chair.

Tonight the Senate is engaging in a proceeding to call the attention of the American people to a very serious matter which exists on the confirmation of Federal judges. It is not a matter which occurs just when there has been a Republican President, but it has occurred also when there has been a President of the Democratic party, when the Republicans controlled the Senate. It has gone back at least to 1987, during the second 2 years of President Reagan's administration.

When the Senator from Illinois calls this theater, he may be right, but it is factual theater, and it is worth the time of the Senate for the American people to focus on this important issue.

It is now a little after 8 o'clock Eastern standard time. Frequently, the Senate Chamber is dark at this time. It is true we could be conducting other business, but there are many days when the Senate has tarried. For example, on Monday, the day before yesterday, when there had been a long-standing expectation that the Senate would not be in session because Veterans Day is traditionally not a day in session, but we came back specially to try to finish our work by the projected date of November 21, unexpectedly we were greeted with a 10-hour filibuster by Senator REID on the other side of the aisle. He has a right to do that—he is a Senator—under our rules.

It doesn't lie in the mouth of somebody to say we are spending time where we could have been working very hard on the appropriations process. I do hope we finish that process. I have been an appropriator for my 23 years in the Senate, and we should move to complete that work as promptly as possible.

But the subject matter tonight is the confirmation process, and it is a very serious subject. When President Reagan was in office, during the first 6 years where the Republican Party controlled the Senate, President Reagan secured confirmation of 82 percent of his district and circuit court nominees. In 1987 and 1988, when the Democrats were in control, that percentage dropped from 82 percent to slightly above 63 percent. When President George H.W. Bush was in office, all 4 years had the Senate in the control of the Democrats. The Senate confirmed slightly more than 62 percent of President Bush's nominees, and 54 percent of his nominees to both circuit and district courts were still pending in the Senate when his term ended.

President Clinton had about the same experience. In 1993 and 1994, there was an average of 79 percent of his district and circuit court nominees confirmed when his party controlled the Senate. For President Clinton's remaining 6 years, the percentage dropped to 54½ percent. So that the business of having the President of one party stymied or reduced in effectiveness on confirmation when the Senate is controlled by the other party has been really an apportionment of blame pretty much equally between Democrats and Republicans during the course of the Reagan, first Bush, and Clinton administrations.

The matter has come to a substantial decline, when, for the first time in the history of the Republic, some 216 years, there has been a filibuster of circuit court nominees.

I think it is important to note that we are not seeking tonight to break a filibuster. That would occur when we would seek to have those who were objecting to the judges continue to talk and talk until they ran out of energy or effort and stopped talking so that we could come to a vote. That was what happened in the filibusters on civil rights legislation in the 1960s.

The last time there was a filibuster in the Senate was 1987 when the subject was campaign finance reform. Senator

BYRD was the leader of the Democrats. Senator DOLE, the leader of the Republicans, called all of us into the cloakroom behind us in the Senate Chamber at about 2 o'clock one morning and said: I would like all Republican Senators to stay off the floor. The reason Senator DOLE asked everyone to stay off the floor was to compel the party in power, the Democrats, to maintain a quorum of 51 Senators because if there are not 51 Senators present, then any Senator may suggest the absence of a quorum, and the Senate conducts no further business.

When Republican Senators, including ARLEN SPECTER, absented ourselves from the floor at Senator DOLE's request, Senator BYRD, the leader of the Democrats, countered with a motion to arrest absent Senators. Sergeant at Arms Henry Giugni was then armed with warrants of arrest and started to patrol the halls, and the first Senator he found was Senator Lowell Weicker.

Sergeant at Arms Henry Giugni was a little fellow, about 5 foot 6 inches, 150 pounds. Senator Weicker was a big guy—still is—about 6 foot 4 inches, 240 pounds. This was at about 3:30 in the morning. Sergeant at Arms Giugni decided not to arrest Senator Weicker. I think he made a good judgment. Then he started to go around and knock on Senators' doors.

Senator Packwood foolishly answered his door. Senator Packwood was then carried feet first into the Senate Chamber. This is a true story. You don't get many out of Washington, but this is a true story. That incident attracted a great deal of attention. CSPAN became the channel of choice instead of Jay Leno.

In having this proceeding, it is more accurately called a marathon than a filibuster because it is not a filibuster. Republicans are doing most of the talking. We seek to attract the attention of the American people to what is going on in the judicial system.

We have at the present time judicial emergencies in four of the circuit courts of appeals in the United States: the Fourth Circuit, the Fifth Circuit, the Sixth Circuit, and the Ninth Circuit. When these judicial emergencies occur, people are denied their day in court, cases languish, the matters are not decided, and the fact of life is that justice delayed is justice denied.

Without burdening the record unduly, it is worth noting that in the Sixth Circuit where there is a judicial emergency, a 50-percent vacancy rate on that court, a death penalty case has been pending for more than 8 years. A plaintiff in a civil case on a job discrimination suit trying to get a job had to wait some 15 months before the case came up. That individual died before the case was ever heard.

The ultimate answer, I suggest, is that cooler heads are going to have to prevail, and we are going to have to establish a principle where it applies regardless of what party controls the White House or what party controls the Senate.

Three years ago, I proposed a judicial protocol to establish a timetable that 60 days after the President submitted a nomination to the Judiciary Committee, there had to be a hearing; 30 days thereafter, there had to be action by the Judiciary Committee on the nomination; 30 days later, the matter had to be brought to the floor of the Senate. Those times could be extended on cause shown by the chairman of the committee with notice to the ranking member or by the majority leader with notice to the minority leader. But those time parameters should be established.

If there were to be a strictly party-line vote in the Judiciary Committee, then that matter ought to be advanced to the Senate floor even without having the customary majority vote to bring it to the floor.

One of the grave problems which may confront the Senate is what is going to happen next when there is a Supreme Court vacancy. The filibusters conducted up until the present time constitute an effort to elevate the confirmation process which under the Senate rules calls for 51 votes, or a majority, to 60 votes which it takes to end a filibuster.

For those who may not know what a filibuster is, that is when one party keeps talking and talking and talking endlessly. But that may be brought to a close under the rules of the Senate with 60 Senators voting to cut off debate. That then leaves 100 more hours to debate, plenty of time even after cloture, even after debate is ended or limited, before the matter comes to a vote.

It does not require a Nostradamus to predict or to understand that the current approach on imposing an ideological test is a precursor for the Supreme Court of the United States. When the Senate is constituted as it is at the present time, it is easy to project that we will find a Supreme Court nominee, who does not satisfy the standards of the other party, subjected to a filibuster and to have a vacancy on the Court. What we are moving toward is deadlock.

Right now, there still remains an aura of some civility in this Chamber, notwithstanding our disagreements on the tactics that one side or the other may use in the Senate. We know that the next vote is the most important vote. Notwithstanding the rancor of the arguments, we do understand that we are here to conduct the business of the people of the United States. The judicial system is limping along—still in motion but limping along.

We face a grave potential problem. If the current course of conduct continues so that when we have a nominee for the Supreme Court of the United States, we have this deadlock, and then with so many 5-to-4 decisions by the Supreme Court deciding the cutting-edge questions in our society, we may look to 4-to-4 decisions, and that means no ruling by the Supreme Court of the United States.

One additional thought. Senator SANTORUM and I use in Pennsylvania a judicial nominating panel under an arrangement where the President has three nominees and the Democrats have one nominee. During the 24-year period from the time President Nixon was elected until the time President Reagan was elected, Republicans controlled the White House for 20 of those 24 years. It seemed to me it was an undue balance of judicial nominees without having the Democrats with any nominees in the district courts, so an arrangement was made when Senator Heinz and I were the Senators, carried on by Senator SANTORUM and myself, to allow the party out of power, the Democrats, to have one nominee out of three for the President—one for the party out of power. That has had a very salutary effect in bringing a little bipartisanship into the process.

I do not suggest that for the Supreme Court. I do not press it for the court of appeals. But I think it is an idea worth considering for the U.S. district courts.

In conclusion—the two most popular words of any speech—it is my hope that something constructive will come out of this marathon. It is my hope that there will be some attention attracted to it. When the Senator from Illinois characterizes this as theater, I don't think that is especially derogatory because it is fact theater. The American people would be well advised to watch this theater than some of that which is on the national networks tonight. This is real. Those sitcoms go on and on and are repetitious. More important than the factual theater is that we are on a vital issue.

I hope the Senators hear from the American people. I hope the American people tell us what they would like to have done: Whether you would like to have this kind of projected stalemate where nominees wait endlessly and where it takes 60 votes, a supermajority, to cut off debate and bring it to a vote, or whether you would like us to follow the constitutional mandate of 51 votes in confirmation so that these judges may be confirmed, may take their places to see that justice is done in an equitable way within a reasonable time period.

I thank the Chair and yield the floor.

The PRESIDING OFFICER. The Senator from Texas is recognized.

Mr. CORNYN. Mr. President, I want to focus on a chart that was displayed earlier by the Senator from New York where he proudly displayed the numbers 168 to 4. I think it is important we ask the question: what is that chart designed to prove?

On one hand, our colleagues on the other side of the aisle in the Judiciary Committee and here in the Chamber rail against the President's judicial nominees, calling them out of the mainstream and, even worse, mean-spirited, right wing. But if, in fact, our colleagues on the other side of the aisle have voted to confirm 168 of President

Bush's nominees, it refutes that allegation because they have to agree that at least 168 of those nominees met their definition of mainstream.

I would like to associate myself with the outstanding comments of the Senator from Kentucky, the assistant majority leader, Mr. MCCONNELL. I wonder what their definition of mainstream truly is.

The second number of 4 is a number they want to be congratulated for blocking. I submit that just because you observe a stop sign 168 times and comply with the law, you are not to be rewarded for running that stop sign four times. It is still a violation of law, and you are still likely to get a ticket from the police officer.

This is more than just about breaking the law. This is about violating our Constitution, the fundamental law of this Nation.

We know really, rather than 168 to 4, the true number we ought to be focusing on is 0 to 4, and let me explain.

From 1789 to 2002—that is, for all of our Nation's history up until this year—the number of filibusters against judicial nominees of a President was—you guessed it—zero. But this year alone, because of this tactic that our colleagues have devised, to deny a bipartisan majority of this body its right under the Constitution to vote up or down on a judicial nominee, this number is 4.

So rather than 168 to 4—and as I explained, I think that repudiates and flies in the face of some of their arguments about President Bush's judicial nominees, and I deny that they are to be congratulated for unconstitutionally obstructing only 4. The real number we ought to be focusing on, and I hope the American people are focusing on, is zero to four because never, ever, in the history of this Republic has a minority in the Senate denied the right of the majority the vote up or down on judicial nominees. It is just not right. It is not fair. It has resulted in a degradation and a downward spiral in the judicial confirmation process of which no one should be proud.

I submit that four unconstitutional filibusters of these distinguished nominees is four filibusters too many. If we want to look at maybe a little bit of a history lesson, as this chart demonstrates, when Franklin Delano Roosevelt was President of the United States, 4,473 laws were enacted, 4 civil rights laws were filibustered—hardly something to be proud of. But I guess if our colleagues across the aisle are proud of their four, the argument would be that the people who filibustered these civil rights laws during FDR's term ought to be proud of that number.

When President Truman was in office, 3,414 laws were passed, 3 civil rights laws were filibustered. Is that something to be proud of? What our colleagues across the aisle say, because 3,414 laws were passed and only 3 were filibustered, that these folks who filibustered those three civil rights laws ought to be congratulated. I think not.

Then when President Lyndon Baines Johnson was in office, 1,931 laws were enacted, 3 civil rights laws were filibustered. To this hall of shame, I would add the 168 to 4, which is nothing to be proud of; it is something to be ashamed of.

Unfortunately, some people have lost their sense of shame in this process, which has become so degraded and so destructive. Indeed, I submit that the filibusters we have of the President's nominees are an abuse of the process. How can they justly claim that a 60-vote requirement to close off debate can somehow trump the Constitution?

As we have heard before on this floor, everyone knows, who has studied the Constitution, that there are supermajority requirements for certain things, and they are stated in the Constitution: To ratify a treaty or to pass a constitutional amendment, the Constitution is very clear that it requires a supermajority. Everything else requires majority rule.

Indeed, majority rule is fundamental to the democratic form of government. Majority rules: We fight our best fight; we make our best argument. Then we have a vote up or down. If we lose, well, we come back to fight another day. We try to persuade others that we were right and the majority was wrong. That is what our form of government is all about; not denying a majority their right, as stated in the Constitution, to let majority rule.

Believe it or not, that is what is happening and that is the reason we are standing here tonight trying to let the American people know that a terrible abuse of this process is occurring and an abuse of the Constitution, indeed a violation of the Constitution, is occurring. It is a disgrace. It is nothing to be proud of.

The other thing I would point out in the few minutes I have remaining, before I turn the floor over to the senior Senator from Texas, is this process is not only abusing the Constitution and creating a downward spiral in the judicial confirmation process that is very destructive of relationships in this institution, of our ability to get things done, it has made it too partisan, too bitter, too angry, and it is destructive.

I would also point out that the tactics that are being used against some of these nominees are despicable. Unless we stand up and repudiate the tactics of some of those who are opposing the fine nominees of President Bush, such as Janice Rogers Brown, I believe those who have joined cause with them in opposing this fine nominee ought to examine their conscience. I think they ought to reconsider their tactics. I think they ought to reconsider whom they associate with, whom they are joining cause with to tear down some of the fine nominees of this President, such as Janice Rogers Brown.

This is a cartoon that was posted on The Black Commentator on September 4, 2003, with President Bush, a racist caricature of Janice Rogers Brown with Justice Clarence Thomas, Colin Powell, Secretary of State, and Condoleezza Rice standing there. The caption says: ''Welcome to the Federal bench, Ms. Clarence—I mean, Ms. Rogers Brown. You'll fit right in.''

It is easy to see why this process has gone downhill and needs a wake-up call from all of us, because we need a fresh start. We need to disavow tactics such as this. Those who are opposing Justice Brown and other nominees should not be proud of that association any more than they claim to be proud of an unconstitutional filibuster of four of these nominees, including Justice Brown, because if, in fact, we do not get a fresh start, we do not have a clean break with this destructive process, if we do not quit tearing down people who want nothing more than to offer themselves to the American people by serving in positions of honor, such as Federal judges, who will answer the call? If they know that answering the call of public service means that they are going to have their reputation destroyed, they are going to be besmirched, they are going to be painted into a caricature that bears no resemblance to who they really are, who will answer the call? We will all be poorer for it.

I yield the floor.

The PRESIDING OFFICER. Who seeks recognition?

The Senator from Texas is recognized. The Chair informs the Senator from Texas that there are 2 minutes 20 seconds remaining on the Republican side.

Mrs. HUTCHISON. Mr. President, just to get an understanding, after that 2 minutes 20 seconds, then it goes to the Democratic side for 30 minutes and then back to the Republican side? Is that the way it is?

The PRESIDING OFFICER. The Senator is correct.

Mrs. HUTCHISON. Mr. President, in the 2 minutes that I have, I say I think the junior Senator from Texas made a very important point and that is the importance of the delicate balance of powers that was put in our Constitution. I think it is important that we do not say, well, 98 percent of the time we adhere to the Constitution. We need to adhere to the Constitution 100 percent of the time.

The Constitution has always said, from its beginning, that we would have a majority required to confirm the judicial nominees of the President. Now, this is by implication, because when the Constitution meant to have a supermajority, it so stated. We have always had a majority, and that is what, by its silence, the advise and consent part of the Constitution has required for judicial nominees, until last year.

In fact, I think the President is losing his constitutional right to appoint Federal judges. I think this whole situation is going to deter good people from offering themselves for the bench,

and the judiciary must have good people if we are going to keep that very strong separation of powers with three separate but equal branches of Government.

In his first 2 years of office, President Bush was able to get 53 percent of his circuit court judges confirmed. The previous three Presidents each had 91 percent in the first 2 years of their office in the very important circuit court judge appointments.

Now, the circuit court, of course, is the next step below the Supreme Court. So a 53 percent record in the first 2 years is something that I think should not be accepted. It is very important that we try to get votes on these judges.

The PRESIDING OFFICER. The time of the Senator has expired.

The Senator from Nevada.

Mr. REID. Mr. President, I yield 15 minutes to the Senator from Indiana and 15 minutes to the Senator from Illinois.

The PRESIDING OFFICER. The Senator from Indiana.

UNANIMOUS CONSENT REQUEST—S. 1853

Mr. BAYH. Mr. President, I ask unanimous consent that the Senate proceed to legislative session and the Finance Committee be discharged from further consideration of S. 1853, a bill to extend unemployment insurance benefits for displaced workers; that the Senate proceed to its immediate consideration; the bill be read a third time and passed, and the motion to reconsider be laid upon the table.

Mrs. HUTCHISON. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard.

The Senator is recognized.

Mr. BAYH. Mr. President, this is an unfortunate debate, and I regret that all of us are here this evening. This debate will do nothing to speed the confirmation of judges about which this session has been called to consider. It will do nothing for the economy, for health care, for education, to protect the environment, or to advance the interests of our Nation's security.

It will, however, at least in small part, bring this august body, about which we care so much, to additional disrepute with the American people, making us look ineffectual and irrelevant.

In some respects, the Senate is being reduced to something close to a farce. It is becoming rapidly not the world's greatest deliberative body but instead the world's greatest Kabuki theater, a place where speeches are given to which very few people listen, no minds are changed, and votes are then held with complete predictability of results.

The search for principled compromise, which has always been a long and honorable part, distinguishing this body from other legislative bodies, has been abandoned in favor of sterile, ideological warfare, satisfying to only the most fervent of partisans. After this debate, I suspect that the far right will be satisfied, I suspect that the far left will be satisfied, and that the rest of the American people will be left scratching their heads, wondering, what on Earth are they doing?

I am reminded of nothing quite so much as some lines from Shakespeare when he characterized another instance as: Great sound and fury that signifyeth nothing.

That is tonight's debate: Sterile, empty, barren of results.

This debate, unfortunately, is a microcosm of everything the American people have come to not like about both the Congress and Washington, DC, something that is all too often all process and partisanship, with no progress on matters of substance and importance to the American people.

Too often the American people view Washington as totally self-absorbed, indifferent to their real concerns, and ineffectual in accomplishing much of value on the things that do matter in their daily lives: Health care, jobs, education for our children and grandchildren.

We must stop this cycle of constant recrimination, a process in which the minority obstructs to gain power and then turns around and complains about obstruction once power has been obtained. It makes us all look bad.

If hypocrisy had a monetary value, we could easily erase the Federal deficit because of debates such as the one we are engaged in tonight.

What is this all about? What are the facts that the American people deserve to know? Is it true that judges are being obstructed solely because of their partisan affiliation? That obviously cannot be the case. One hundred and sixty-eight of President Bush's judicial nominees have been confirmed. I assume that all of them, if not almost all of them, are good card-carrying Republicans or he would not have nominated them. Obviously, there cannot be some stonewall to object to Republicans being appointed to the Federal judiciary. This simply is not the case.

Are judges being rejected up to a point based solely upon ideological concerns? This also cannot possibly be the case. Of these 168 judges who have been confirmed, I assume that all, if not almost all, are in fact fairly conservative jurists, or hold out the prospect of being fairly conservative jurists. Otherwise, they would not have been nominated by this President.

So up to a point, it is obvious that conservatives are not being denied their place upon the Federal judiciary. This is all about power, the balance of power between the executive and legislative branches and whether the advise and consent function should be abolished whenever the Senate is controlled by the party of the President. It is all about the balance of power between the minority and the majority caucuses in this Senate and whether the right to debate should be limited in the case of judicial nominees, unlike any other business taken up by this body.

It is also about tipping the balance of power within the Federal judiciary and setting the stage for a Supreme Court vacancy to be filled by someone of even the most extreme ideological conviction and views.

Is that possibly what the Constitution had in mind when it established the right of advise and consent in this Senate? Is that something for which we should abrogate the right to unlimited debate in this Senate, selecting judicial nominees in exclusion to all other topics in this regard? Of course it is not.

We are ignoring the issues this evening that are of most importance to the balance of the American people. When I go home, I hear great talk about the economy and job losses. In the last 3 years, we in the State of Indiana have lost approximately one out of every six of our manufacturing jobs. One hundred fifty-nine thousand jobs, nonfarm jobs, have been lost during this period of time. That is what I hear people talking about. Small business men wonder how they are going to compete in the global economy today. Large business men and women wonder how they are going to make ends meet, particularly with the skyrocketing cost of health care. Many people ask how we are going to compete with China, India, and other countries that all too often seek to abuse the rules of international trade to seek unfair economic advantage. Those are the subjects we should be debating tonight.

Those are the topics that are on the minds of Hoosiers to whom I talk. Very rarely am I asked about vacancies in the Federal judiciary.

When I was returning from Indiana just last evening, one of the security guards, a gentleman who looked somewhat advanced in his years, called out to me as I was going through security, saying: Senator, what about the Medicare drug benefit? Is something going to get passed?

I said: I hope so.

He said: Well, it probably will not be structured the way it ought to be anyway.

I said: Well, I hope not. We are going to go back and see if we cannot hammer out a reasonable compromise.

I see some of my colleagues, including Senator GRASSLEY, who are laboring mightily toward that very end, and I salute him for that. That is what we should be debating tonight, how to reconcile our differences on providing drug coverage to senior citizens who are asking about it; how to make health care available to the American people in a way that is accessible and affordable. That is what is on the minds of Hoosiers to whom I talk. That is what we should be debating this evening in this body.

What about our education standards and what about providing our children and grandchildren with access to quality affordable education? When I think about the economy of the future, more than anything else it is going to require advanced levels of education,

skill, and know-how. We are going to prepare my young sons and the rest of our children and grandchildren to have a better standard of living in a prosperous economy. It is going to be based not upon how strong they are but upon how knowledgeable they are, how well trained they are, how skilled they are. That is going to enable us to build a better economy. We are not debating that tonight.

At no point, in my recollection, have we set aside 30 hours to debate quality health care. At no point, in my recollection, have we set aside 30 hours to debate the economy or what we are going to do to create quality jobs. At no point, in my experience in the Senate, have we set aside 30 hours to talk about what we can do to debate quality education in the way we are setting aside these 30 uninterrupted hours in the wee hours of the morning. This is a clear example of misplaced priorities.

I hope this Senate will extricate itself from the morass into which we have sunk and begin to rehabilitate ourselves in the eyes of our countrymen and women. I hope we can once again begin to address the great issues that are of concern to the American people, that press all around us—what our country can do to be more prosperous, more just and more free. Above all, I hope that we as Senators can remember why we are here, and that is not to wage war upon one another but instead to once again renew the struggle against the ancient enemies of man: Ignorance, poverty, disease. That is why we are here, not sterile ideological debates.

I hope we can learn from this experience so that we will not have to repeat it. I hope we can focus on making progress, not dividing this body over the country. This aisle that separates the chairs, Republicans on one side and Democrats upon the other, gives us the opportunity to build bridges of reconciliation and understanding, forging principled compromise which has always been the hallmark of this institution. We have strayed from this heritage for too long. It is a tradition to which we must return if we are to once again recapture the confidence of the American people.

The final thing I will say is that we had an election in Indiana for our mayors this last Tuesday, a week ago yesterday. Something on the order of 20 percent of the people of my State turned out to vote for our mayors. When I had the privilege of being elected to this body in 1998, about 36 percent of the eligible voters in my State took the time to go to the polls. That is barely one out of three. In the closest Presidential election in the history of our country 2 years ago, decided finally by the Supreme Court, barely half of the American people felt connected enough to their institutions of self-governance to take even the most elementary step of citizenship—going to the polls to register their preference.

What has happened to our democracy? What has happened when 20 percent or 36 percent or a bare majority feel invested enough in the cause of shaping their own destiny to take the time to participate in our elections? If we are going to renew our democracy, if we are going to lead this country to meet the great challenges of our time, if there is one thing I am absolutely certain, it is that it will take all of us, each and every one of us from every ethnic group, racial group, gender, and walk of life.

Too many people have become disillusioned. Too many cynical, too many skeptical whether this body and their government can make a difference anymore. Events such as this debate tonight do not help.

We need to get back to the business at hand, putting before the American people an agenda of hope and opportunity so we can once again reenlist them in the cause of making this the greatest democracy known to man. That, at the end of the day, is what has brought us here. I suggest that is the business to which we must once again return.

I yield the floor.

The PRESIDING OFFICER. The Senator from Illinois is recognized. There are 16 minutes 54 seconds remaining.

Mr. DURBIN. I begin by commending my colleague from Indiana. That was an extraordinary speech. I hope that for a moment Senators on both sides of the aisle will stop and reflect on what he just said. I think it was a challenge to everyone, as strongly as we feel about what we are debating tonight, the appointment of Federal judges; the Senator from Indiana is right. The people across America wonder why we are wasting the time of the Senate on issues that have no importance or relevance to their lives, and because they cannot understand us, they are estranged from us. They do not feel invested in this process, they do not feel a responsibility to vote; they, frankly, think we spend too much time in partisan posturing. The 30 hours of this debate are a classic example of that kind of partisan posture. That is unfortunate.

What the Senator hears in Indiana and I hear in Illinois and I daresay every Senator hears in their State—I have been going back to Illinois for 4 straight years in the month of August trying to tour the State, meeting with business and labor leaders and community leaders, to ask what is going on. For 4 straight years they told me the same thing: Senator, can you do anything about the cost of health insurance? It is killing us. It is killing my small business. It is killing my large business. My family is worried about coverage. What are you going to do in Washington about the cost of health insurance? I have to basically shrug my shoulder and say: I am sorry, that is not on our agenda. We have other things we debate in Washington, not the things you and your family worry about, that keep you up at night. This is a good example.

Would it not have been inspiring if we came together as Democrats and Republicans on the floor to talk for 30 hours about the future of health care in America, to speak to it in honest, nonpartisan fashion, to try to address some of the most controversial parts of it in a responsible, gentlemanly way?

That is what we are expected to do. That is not what this is about. This is about alerting FOX News to grind out their cameras at the entrance of the Senate to watch a parade of Senators come in—Senators who have now disappeared. This is about charts being made, night and day by Democrats and Republicans, to argue their case.

My people living back home in Springfield, IL, and Chicago, IL, I am sure, turned off CSPAN a long, long time ago, if this is the best we can offer them. Sadly, that is all we are offering them.

We left the Veterans Administration appropriations bill—we could have finished it—for veterans hospitals and the millions of veterans across America because we did not have time; we had to start this never-ending 30-hour debate. We cannot entertain a motion made by the Senator from Indiana, a motion I made, as well, to try to do something about the 9 million unemployed Americans whose benefits are running out. We do not have time for that. We have time for this political debate.

That is unfortunate. It is distressing. I have given 21 years of my adult life to public service. I have never regretted a moment of it. I walked away from a law practice and never looked back. This is the most exciting and interesting thing I can think of to do with your life, to be involved in public service. I encourage everyone, regardless of your political stripe, to get involved. You will love the opportunity it gives you to help people. But, frankly, we are not seizing that opportunity or we would not be here tonight. We would not be here discussing a question about whether 168 or 172 judges is the right number.

Is this the best we can do? I think not. I think we can rise to a greater challenge but we have to put aside the partisanship.

I readily concede I have struck a few partisan blows and a few have been thrown my way. That is part of life in the Senate, I am sure, and life in the big leagues. But at the end of the day when it is all over, at the end of the year or end of the session, each of us would like to point back to something we did to improve the lives of the people we represent. What have we done to make the schools better? What have we done to deal with the economic uncertainty of middle-income families? What have we done to deal with the trade laws that are killing us in the Midwest and across the Nation?

I have been a proponent of free trade. It is almost impossible to defend at this moment in time. We are not enforcing our trade agreements. We have lost five or six manufacturers in Indiana and the same is true in Illinois. We

lost 3 million jobs across America. Frankly, many of those jobs will never come back. When we read headlines that say there are 120,000 new jobs in America, that is good news. But ask the hard question, are the jobs we created paying as much as the jobs we lost? If they were manufacturing jobs, the answer is pretty obvious. The answer is no, they are not. We are losing more and more good jobs. Instead of focusing on that as we should, on the things that people care about, we are spending our time in 30 hours of debate over four judges.

The senior Senator from Texas said earlier that the President has a constitutional right to appoint judges. I don't want to correct the Senator from Texas, but she is wrong. The President does not have a constitutional right to appoint judges. The President has a constitutional right to nominate judges. The judges are appointed through the advice and consent of the Senate. Therein lies the difference in our points of view. From the Republican side of the aisle, the President has a constitutional right to name the judges he wants. End of story. But the Constitution says otherwise. And it always has.

Even the most powerful and beloved President has to be held accountable to the people of America through the Senate, through the House, and that is why we are here tonight. At one moment in history when President Roosevelt had been reelected with the largest majority in the history of the United States, Franklin Roosevelt, he decided he had had his fill with the U.S. Supreme Court across the street and they were not treating him well and he came up with a scheme to pack the court, to add more Supreme Court Justices because they just were not ruling on his laws the way he wanted them to. He proposed that to an overwhelmingly Democratic Congress in the House and the Senate and ran into a firestorm of opposition from his own party.

President Franklin Roosevelt, as popular as he was, with the mandate he brought to office—and I will not reflect on this President's mandate in this discussion, but President FDR's mandate was substantial. He felt that he had a moment in history when he could change the Supreme Court. And this Senate, the Democrats in the Senate, said: No, we have to draw the line; this executive branch cannot control the judicial branch and we will stand in the path of a popular and beloved President. And they did. They stopped him.

That, to me, was an important moment in history—when Senators of the same political party said to a President, this Constitution created three branches of Government for good reason.

So tonight we are in a position where many are arguing that this Senate should step back and not assert its constitutional right to speak to the qualifications of judges. It will be a sad day if we allow that to occur.

Let me try to synthesize this into what it is about. It is not about the four judges or two more who might be added on Friday. It is about the next appointment to the Supreme Court across the street. That is the real story. There are a lot of good reasons we are here tonight but the real reason is the next Supreme Court vacancy and the belief on the Republican side of the aisle that if we can hold fast with our approach in stopping people unqualified, unfit, to serve on a Federal court, they will have a difficult time passing through a controversial nominee to the U.S. Supreme Court.

I think, in my heart of hearts, that is why we are here this evening. They are trying to smooth the road, prepare the way for that Supreme Court nominee from this President.

Now, let me give advice to my friends—and they are not likely to take it—on the Republican side. There is a way to avoid all that. Pick a man or a woman who is of such impeccable legal background, great credentials, the kind of person with the integrity that they will be above this kind of political debate. It can happen and it has happened.

In my State of Illinois, a State with two Senators from opposite political parties, we have not had one problem in filling the Federal judicial vacancies. We have done so, Democrat and Republican, with good men and women whom I am certain will serve this country well. I just gave the green light to a nominee who sits on our calendar, and I hope we will move quickly, Mark Philip, who was a clerk to Justice Antonin Scalia. I am a Democrat, approving a former clerk to Justice Scalia. I met him and trust him and I think he will be a great Federal district court judge.

That can happen again. But we have to move away from those who are ideological extremes. We have to move away from those who are lightning rods. We have to move to a center path, which most Americans expect of us.

Sadly, tonight, we are being told this Senate should not even ask questions of these nominees. That is wrong. We have a constitutional responsibility, a responsibility that must be met.

Some have said, incidentally, that ours are the first to ever filibuster nominees. In fact, the Senator from Pennsylvania said it is the first time in the history of the United States anyone has ever filibustered a judicial nominee. Well, this chart shows that is not correct. Abe Fortas of the Supreme Court, subject to cloture motion, filibuster; Stephen Breyer, First Circuit—I am going through the list—Rosemary Barkett, Eleventh Circuit; Lee Sarokin, Third Circuit; Marsha Berzon, Ninth Circuit; and Richard Paez, Ninth Circuit.

The fact is, there have been judges brought to the Senate floor who have been filibustered in the past. The fact is, most of those filibusters failed. The motion for cloture prevailed but the filibuster was on. On the four who are under contention this evening, the filibuster has succeeded. The motion for cloture has not been filed successfully. That is the difference. To say it has never happened before in our history is to defy the obvious. It certainly has happened before.

The point we are trying to make is it is not unreasonable to have 4 nominees out of 172 questioned, to be found lacking.

Let me close by saying, again I commend my colleague from Indiana because I think he put it in perspective. We all know it is true. We could be spending our time doing a lot more important things for America and a lot more important things for the people we represent than squabbling over four judges.

Mr. REID. Will the Senator yield?

Mr. DURBIN. I am happy to yield.

Mr. REID. I ask the Senator, through the Chair, there have been statements made by the majority, for weeks, months, that never ever in the history of the country has there been a filibuster conducted regarding a Federal judge. Would the Senator again state whether or not those statements regarding filibusters of Federal judges having never been held is true or false?

Mr. DURBIN. It is false. It is clearly false. Justice Abe Fortas, 1968; Judge Stephen Breyer, 1990; Judge Rosemary Barkett, 1994; Judge Marsha Berzon, 2000; Judge Paez, 2000. And many others.

The fact is, for those who say there have never been filibusters by nominees, that is clearly not right.

Mr. REID. Another question I ask my friend from Illinois, through the Chair, what I have heard the Senator state tonight is that on numerous occasions—in fact, the chart that is behind you indicates this—that there would be numerous occasions going back to at least 1968, there have been filibuster after filibuster, and sometimes they have tried to invoke cloture on more than one occasion; is that true?

Mr. DURBIN. That is accurate. As noted here, for Judge Breyer, twice. That is a clear example. On some of the others, there could have been more than one time, as well.

The point I would like to make to my friend from Nevada, we also know that under President Clinton, 63 of his nominees never got a hearing. They were never given a chance to come to the floor for this vote because the Republican-controlled Senate Judiciary Committee would not even give them a hearing.

Mr. REID. Will the Senator yield for a question that I ask through the Chair?

Mr. DURBIN. I am happy to yield.

Mr. REID. The Senator from Illinois is a member of the Judiciary Committee. Would you explain to the people watching this—whatever it is—would you explain to the people how a person gets to the Senate floor to be nominated for a judge? How do they

get here? What is the process? Explain to the people of the country what you mean when you say someone never had a hearing.

Mr. DURBIN. It is customary for a Senator of a State, depending on the President's party, to be able to suggest to the White House a nominee to fill a vacancy on the Federal district judge and the Federal circuit court. That nominee is then given to the White House for approval and investigation, FBI background checks, the normal things. If the White House then clears that nominee, the name is sent to the Senate Judiciary Committee. A hearing is scheduled in the normal course where the person is brought before the committee. After the committee has done its investigation, questions are asked and then the person is brought for a vote and eventually finds their way to the floor.

Under the Clinton administration, after the nominee came out of the White House, 63 times, 20 percent of the President's nominees were stopped at that point and never brought to a hearing before the Senate Judiciary Committee. So the argument that we have stopped four belies the reality that when we looked at the numbers from the Clinton administration, 20 percent, not 2 percent but 20 percent, of the judges never got their chance before the Judiciary Committee to even present their credentials and argue for their nomination.

I say to the Senator from Nevada, that is a sad reality. Frankly, this President is being treated far better than President Clinton. This Senate Judiciary Committee, under the leadership of Senator PATRICK LEAHY, a Democrat, approved 100 of President Bush's nominees, gave them hearings and moved them forward.

We tried in a bipartisan fashion to meet our constitutional responsibility. Only 4 times out of 172 have we said no. Only four. It is reasonable for us to stop and ask hard questions of nominees who are asking for lifetime appointments to some of the highest courts of the land.

Mr. REID. Will the Senator yield?

The PRESIDING OFFICER. The time of the Senator from Illinois has expired. However, there is a minute and a half left on the Democratic side.

Mr. REID. Will the Senator answer this question?

The PRESIDING OFFICER. The Senator from Nevada is recognized.

Mr. REID. I direct the question through the Chair to my friend from Illinois. The number 168 on the chart behind you, does that represent 168 people who have been nominated by President Bush who are now serving in the Federal judiciary who have lifetime appointments?

Mr. DURBIN. That is correct. I say to the Senator from Nevada that there are some among those 168 about whom I have had misgivings. Many of them I voted for anyway, understanding this is the President's prerogative to nominate people for the Federal courts.

Going back to the point I made earlier, the President does not have a constitutional right to appoint Federal judges. He has the right to nominate them. Only with the advice and consent can they be appointed to the Federal judicial vacancies. Therein lies the real difference in the argument we brought forward this evening.

I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada has the floor with 27 seconds.

Mr. REID. When the majority uses their time, the half hour will be divided in whichever way the Senator from Michigan, Mr. LEVIN, and the Senator on the other side wishes to divide 30 minutes.

The PRESIDING OFFICER. The Senator from Texas is recognized.

N O T I C E

Incomplete record of Senate proceedings.

Today's Senate proceedings will be continued in the next issue of the Record.